

1 IN THE DISTRICT COURT OF GUAM

2 TERRITORY OF GUAM

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**FILED**  
**DISTRICT COURT OF GUAM**

NOV 30 2006 *mwm*

**MARY L.M. MORAN**  
**CLERK OF COURT**

10 UNITED STATES OF AMERICA, ) COURT OF APPEALS  
11 Plaintiff, ) ) CASE NO. 06-  
12 vs. ) )  
13 JOHNNY WU SU, ) ) CRIMINAL CASE  
14 Defendant. ) ) NO. CR01-00089  
----- ) )  
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15  
16 TRANSCRIPT OF PROCEEDINGS

17 BEFORE

18 THE HONORABLE MORRISON C. ENGLAND, JR.

19 Designated District Judge

20  
21 **ORDER TO SHOW CAUSE HEARING/SENTENCING**

22 **WEDNESDAY, SEPTEMBER 27, 2006**

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24  
25 **ORIGINAL**

Wanda M. Miles  
Official Court Reporter  
District Court of Guam

1 **APPEARANCES:**

2

3 FOR THE PLAINTIFF: UNITED STATES ATTORNEY'S OFFICE  
4 BY: FREDERICK A. BLACK, Esq.  
5 ASSISTANT UNITED STATES ATTORNEY  
6 Suite 500, Sirena Plaza  
7 108 Hernan Cortez Avenue  
8 Hagatna, Guam 96910

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10 FOR THE DEFENDANT: CIVILLE & TANG  
11 Attorneys At Law  
12 BY: G. PATRICK CIVILLE, Esq.  
13 330 Hernan Cortez Ave., #200  
14 Hagatna, Guam 96910

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1 HAGATNA, GUAM; WEDNESDAY, SEPTEMBER 27, 2006; 11:54

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3 THE CLERK: Criminal case 00-00089, United  
4 States of America versus Johnny Wu Su, continued  
5 further proceedings on order to show cause why  
6 supervised release conditions should not be revoked.

7 Counsel, please state your appearances.

8 MR. BLACK: Afternoon, Your Honor, Fred Black  
9 for the government.

10 THE COURT: Good afternoon.

11 MR. CIVILLE: Morning, Your Honor, Patrick  
12 Civille for Johnny Wu Su, and Mr. Su is present with  
13 me.

14 THE COURT: Mr. Civille, you had indicated  
15 earlier that you needed time to speak to your client.  
16 Did you have that time?

17 MR. CIVILLE: I did go down and speak to him,  
18 Your Honor. If I could have just one moment; Mr. Su  
19 was considering a matter and he was going to let me  
20 know as he came into the courtroom.

21 THE COURT: Go ahead.

22 (Pause.)

23 MR. CIVILLE: Your Honor -- (static).

24 Is that me? Sorry.

25 Your Honor, we are prepared to go forward.

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1           If I may, Your Honor, Mr. Su is prepared to  
2 enter an admission today. He does have some matters  
3 that he wants to bring to the court by way of  
4 mitigation that we are not prepared to go forward on  
5 today, and I don't know if it would be possible -- I'd  
6 do it two ways. I can make a proffer of what those  
7 matters would be, or ask the court to delay the actual  
8 disposition, make the admission today, but delay the  
9 disposition until Friday.

10           THE COURT: Can you give me a proffer as to  
11 what those would be?

12           MR. CIVILLE: Your Honor, there's no doubt  
13 that beginning in about May of this year, Mr. Su  
14 entered into a period where he certainly regressed  
15 and had some inappropriate behavior, engaged in  
16 inappropriate behavior. Up until that time he had been  
17 actually doing quite well.

18           And he had asked the court for an opportunity  
19 -- he has, among other things, he is a graduate of the  
20 University of Guam, he has a Bachelor's degree in  
21 criminal justice. He is just shy of having actually a  
22 Master's in criminal justice. He has also been taking  
23 courses at Guam community college towards an automotive  
24 technology degree and has a 4.0 average in that. He  
25 has asked me to, and believes he can obtain letters

1 from his faculty members in those two colleges, to  
2 attest to his hard work and diligence over the past few  
3 years.

4 He has also been employed in two places, one a  
5 sporting goods store and the other in the Salvation  
6 Army Lighthouse Recovery program where he was actually  
7 both a, at one point a client, and then a like a  
8 resident manager or counsellor, and he believes he can  
9 provide the court with information from those two  
10 sources as to his good behavior, and progress up until  
11 approximately May where he, he entered into a very bad  
12 period.

13 THE COURT: All right. Mr. Black?

14 MR. BLACK: Yes, Your Honor. The government  
15 would prefer to go forward with the whole matter today.  
16 We would not object, in fact, we would even stipulate  
17 to these things he's saying in terms of that he's  
18 bright and that he did well at the school and those  
19 things, so we see no reason to continue the sentencing.

20 What we'd like to hear from the defendant is  
21 what he's prepared to admit to. And I think that the  
22 best approach there would be to look at the  
23 supplemental declaration in support of the petition,  
24 the very last page of it, it lists all these different  
25 violations. My understanding is that he's prepared to

1 admit to all of them.

2 THE COURT: Do you have a copy of that for me?

3 I don't seem to have one here.

4 (Pause.)

5 THE COURT: Thank you.

6 MR. BLACK: The very last page, Your Honor,  
7 deals with sort of a chart. It shows the different  
8 things, starts off with an arrest for disorderly  
9 conduct, and then there's use of controlled substance,  
10 and it goes from there.

11 My understanding is the defendant is prepared  
12 to admit to everything on that list except for the two  
13 matters involving the arrests. And the government was  
14 not going to argue those matters, but he was going to  
15 admit to all the Class C violations as well as to a  
16 Class A violation, that's possession of a controlled  
17 substance, that dealt with the ten grams of  
18 methamphetamine found in his residence.

19 So, on that list, my understanding is he's  
20 prepared to admit to everything except for the two  
21 arrests, and as long as there's a Class A violation,  
22 it gives the court maximum latitude without having to  
23 deal with all of the matters that went into those  
24 arrests and the state violations that may proceed  
25 independently of this court.

1                   THE COURT: So what is your client prepared to  
2 admit to today?

3                   MR. CIVILLE: Your Honor, Mr. Black has  
4 correctly stated what my client will admit to. And  
5 specifically, use of a controlled substance, on June  
6 23rd, 2006 was a Class C violation, failure to submit  
7 to substance abuse testing on June 29, 2006, July 10th,  
8 13th, 18th and 25th, 2006, Class C violations, failure  
9 to submit a complete and written report for June 26 as  
10 a Class C violation, failure to notify the probation  
11 officer within 72 hours of being arrested, a Class C  
12 violation, and possession of a controlled substance, a  
13 Class A violation.

14                  THE COURT: Are you willing to stipulate to  
15 the good conduct and progress of your client as  
16 indicated by Mr. Black?

17                  MR. CIVILLE: Yes, Your Honor.

18                  THE COURT: All right, I will accept that  
19 stipulation, that he has obtained a Bachelor's degree  
20 in criminal justice, appears to be a few units short of  
21 concluding a Master's degree in criminal justice, which  
22 obviously will attest to the level of dedication and  
23 intelligence to get that far in that particular field,  
24 and that he has also currently enrolled in the Guam  
25 Community College auto technology and currently has a

1       4.0. I would assume that's a 4.0 standard, so it would  
2       be a straight A average in that particular course of  
3       study as well.

4                   So the court does recognize that he does have  
5       the ability to do what needs to be done, and have the  
6       intelligence to understand what needs to be done as  
7       well.

8                   That stipulation is entered.

9                   Is your client prepared to admit to the other  
10      items that we just mentioned?

11                  MR. CIVILLE: Yes, Your Honor.

12                  THE COURT: All right. Mr. Su, a petition has  
13       been filed in this matter alleging that you violated  
14       the terms of your supervised release. Do you  
15       understand what that petition is.

16                  THE DEFENDANT: Yes, Your Honor.

17                  THE COURT: Sorry?

18                  THE DEFENDANT: Yes, Your Honor.

19                  THE COURT: At this time I'm going to ask you  
20       whether or not you engaged in conduct which violated  
21       certain terms of your supervised release when you were  
22       sentenced back on July 23rd, 2002 by Judge Unpingco; do  
23       you remember that?

24                  THE DEFENDANT: Yes, Your Honor.

25                  THE COURT: All right. First of all, do you

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1 admit or deny that you used a controlled substance on  
2 June 23rd, 2006?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: You say I admit or deny; which is  
5 it?

6 THE DEFENDANT: I admit.

7 THE COURT: Do you admit or deny that you  
8 failed to submit to substance abuse testing on June  
9 29th, July 10th, 13th, 18th and 25th, 2006?

10 THE DEFENDANT: I admit.

11 THE COURT: Do you admit or deny that you  
12 failed to submit a complete written report for June of  
13 2006?

14 THE DEFENDANT: (No response.)

15 MR. CIVILLE: Your Honor he's -- my client is  
16 whispering to me. It was actually July that he missed,  
17 not June. Probation is checking that.

18 THE COURT: But was July missed?

19 All right, I'll take that. Do you admit or  
20 deny that you failed to complete a written report for  
21 July, 2006?

22 THE DEFENDANT: Admit.

23 THE COURT: All right. Do you admit or deny  
24 that you failed to notify the probation officer within  
25 72 hours of being arrested?

1                   THE DEFENDANT: Admit.

2                   THE COURT: And do you admit or deny that you  
3 possessed a controlled substance?

4                   THE DEFENDANT: Admit.

5                   THE COURT: All right. Counsel, will you  
6 stipulate that's a factual basis for each of these  
7 admissions?

8                   MR. CIVILLE: Yes, Your Honor.

9                   MR. BLACK: Yes, Your Honor.

10                  THE COURT: All right, thank you.

11                  Having heard the defendant admit to the  
12 violations, and also there being a factual basis for  
13 the admissions, it's been stipulated to here in open  
14 court, I will find those admissions to be true, all of  
15 them.

16                  And we're ready to proceed with disposition?

17                  MR. BLACK: Yes, Your Honor.

18                  THE COURT: Mr. Civille, are you ready to  
19 proceed?

20                  MR. CIVILLE: Yes, Your Honor.

21                  THE COURT: Do you wish to be heard on  
22 disposition?

23                  MR. CIVILLE: Yes, Your Honor. Your Honor, if  
24 I may, I would ask that the government be permitted to  
25 go forward. I think they have a recommendation that we

1 will support.

2 THE COURT: Go ahead, Mr. Black.

3 MR. BLACK: Yes, Your Honor. The government  
4 is recommending a 30-month period of imprisonment,  
5 followed by 66 months of supervised release. The  
6 defendant has 96 months to go in terms of supervised  
7 release. Whatever period of incarceration the court  
8 imposes we would subtract that from the 96 months), and  
9 that would leave the amount that would follow. The  
10 government makes this recommendation because the  
11 defendant is smart; he is capable, we hope, of  
12 rehabilitating himself if he ever sets his mind to do  
13 that. And has done, as counsel pointed out, some good  
14 things when he was out, but definitely fell off the  
15 wagon and appears to have fallen off substantially from  
16 May forward with some very serious situations.

17 The reason that the government recommends the  
18 30 months is that the total amount of prison time  
19 hanging over this defendant's head is up to five years  
20 imprisonment, and of course the court could impose up  
21 to five years of imprisonment. But there would be a  
22 benefit to the government in him having a period of  
23 supervised release when he gets back out because I  
24 think this individual needs to be closely monitored by  
25 society when he gets out because of this repetitive

1 behavior in the criminal side. If he got back out and  
2 he still had 30 months over his head, which would be  
3 the amount that he would have left over his head if  
4 he's sentenced today to 30 months, that would give a  
5 degree of punishment next time around that would still  
6 be available. It would subject him to 30 months at  
7 this time, but then there would be 66 months left  
8 available.

9                 If the court goes higher than the 30 months,  
10 it's less time that the court could impose a second  
11 time around. And I'm hoping that there won't be a  
12 second time around, but based on the pattern of this  
13 defendant, going back to the original presentence  
14 report when he apologized to the court and said it  
15 would never happen again -- Well, it is happening  
16 again. The question is just how much prison time to  
17 give him at this time. The government recommends 30  
18 months.

19                 THE COURT: And 66 months of supervised  
20 release?

21                 MR. BLACK: Yes, Your Honor.

22                 THE COURT: And I think that's very  
23 appropriate, what you just said, that Mr. Su had said  
24 originally this would never happen again and here it  
25 has happened again. And at the time Judge Unpingco

1       sentenced him, he was given an 18-month downward  
2       departure from his original sentence, and he let the  
3       judge at that time believe that it wouldn't happen  
4       again. So, I have taken that into consideration here  
5       as well.

6                   Mr. Civille?

7                   MR. CIVILLE: Your Honor, for six years it  
8       didn't happen again. Mr. Su was tested frequently  
9       while on supervised release, he was tested I believe  
10      six to eight times per month, on average, until this  
11      summer, late spring-early summer, he had passed all of  
12      his tests. My understanding is that he ran into -- he  
13      had progressed very nicely, had gone through the  
14      Lighthouse Recovery program, and done a very fine job  
15      there. And had been made basically a semi-inmate  
16      counsellor, sort of a patient counsellor, sort of  
17      trustee. There was a new person, a manager who came  
18      in that -- he and Mr. Su did not get along, and Mr. Su  
19      was placed on administrative leave, and eventually  
20      terminated.

21                  And I'm sure Your Honor sees it all the time,  
22       you have people come before you who are just studies  
23       in contrasts. Mr. Su has been -- is obviously very  
24       bright, as Mr. Black has pointed out, he's done very  
25       well in school, seems to have a great deal of

1 potential, and at the same time he handles adversity  
2 very poorly. Being turned out of the Lighthouse  
3 program, being rejected by the Lighthouse program  
4 apparently for reasons that aren't clear in the limited  
5 information I have on him, triggered in Mr. Su just  
6 this defeatist attitude, and it led to substance -- his  
7 getting back and using ice again, testing positive for  
8 drugs, and just going into a very rapid downward  
9 spiral.

10 We would ask the court, I would ask Your Honor  
11 to adopt the government's recommendation of 30 months.  
12 I would think it is a significant period of time, but  
13 still, and it provides the government a hammer over his  
14 head that the government seeks once Mr. Su gets out of  
15 prison. At the same time it also, I think, recognizes  
16 the positive steps that Mr. Su had been making, and had  
17 made really for over two years until this past summer.  
18 And I think it holds out some hope for him that if he  
19 can once again get control of whatever demons it is  
20 that drive him, that he still has a chance once he gets  
21 out to do something worthwhile with his life. And more  
22 just as importantly, to live a free life.

23 THE COURT: All right. Thank you.

24 And is there anything else Mr. Su wants to say  
25 before I pronounce sentence?

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District Court of Guam

1                   THE DEFENDANT: Your Honor, I'm sorry about  
2 what happened. I let a lot of people down. (Pause.)  
3 People that love and care about me. I didn't manage  
4 myself well. And when I knew I needed help, I did call  
5 my attorney, I sought advice what I should do, how I  
6 can get help. And he recommended that I turn myself in  
7 and I will be helped one way or another. And I  
8 followed his advice, I self-surrendered.

9                   And I would like, you know, I would like the  
10 chance to, you know, get back to where I was when I  
11 first was released. Because during that period of time  
12 I lost my job, the mother of my children kicked me out  
13 of the house, I just had a newborn baby, I wasn't able  
14 to see my newborn baby. Kept that away from me. My  
15 mother wouldn't allow me into the house because of what  
16 happened. I had no family support, I had no financial  
17 income, and somehow the only people that accepted me  
18 were people that were of bad influence. I had to  
19 realize that. And I do realize that. And when I  
20 finally woke up, and I realized it was getting out of  
21 hand, I did the best I could, I self-surrendered. I  
22 didn't want to go any further beyond where, you know,  
23 the amount of trouble I was already in.

24                   And I admit, Your Honor, I had that disease of  
25 addiction, and I want to get back into that drug

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1 program again, and, you know, rehabilitation. And if  
2 it has to go and have incarceration, then fine, so be  
3 it. I have -- but I would like the court to help me.

4 That's it, Your Honor.

5 THE COURT: All right. Thank you.

6 This matter submitted, counsel?

7 MR. BLACK: Yes, Your Honor.

8 MR. CIVILLE: Yes, Your Honor.

9 THE COURT: All right, thank you.

10 Mr. Su, I listened to the words that you have  
11 said and read your records, and I have a couple of  
12 comments before I pronounce the sentence here today.

13 First of all, I appreciate the fact that  
14 you're an intelligent individual, you have the  
15 intelligence to do anything you want to do; it's  
16 obvious at least from an educational standpoint. I  
17 would hope that you would utilize that intelligence in  
18 a way to better yourself rather than let yourself fall  
19 down, fall backwards.

20 You've made a great stride, in my opinion, in  
21 that you accepted responsibility for something, and  
22 that is, you admitted to having the disease of  
23 addiction. That is usually a big factor in people like  
24 yourself who are intelligent who are involved in these  
25 types of activities. But once you make that admission

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1 and understanding, then things can move forward; it  
2 can't until that time. You have to accept  
3 responsibility for your actions. You're smart enough  
4 to know that if you're, whatever happens with your wife  
5 wouldn't let you in the house, your mother won't,  
6 you're not accepted by anyone, that happens to people  
7 all day long, but they don't turn to a life of crime or  
8 don't get involved in drugs and different things,  
9 especially those that have the intelligence.

10           What I would hope that you would do the next  
11 time you get into that down period is, rather than go  
12 to those who you think accept you but only accepting  
13 you for a temporary period of time because you've got  
14 something that they want, namely your money, so that  
15 you can be involved in this activity again, you will  
16 turn to someone for support, not just your attorney  
17 when it's too late, but find some other support group,  
18 because you understand what it's about. I can't  
19 believe that you can't, at least when that comes to  
20 your mind, you make a decision. I'll tell you what, if  
21 you make the decision next time, you're just going to  
22 go to prison and for a longer period of time. And if  
23 that makes you feel better, it's worth it to you at  
24 that time, then you go right ahead. But I don't think  
25 it is, and I would hope that you would start using your

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1       intelligence for some -- something that will help  
2       benefit you in the future.

3               That having been said, in accordance with the  
4       Sentencing Reform Act of 1984, it's the judgment of  
5       this court that supervised release previously imposed  
6       will be revoked. I'm ordering that Johnny Wu Su be  
7       ordered to serve a term of imprisonment of 30 months.

8               While in prison, he is to participate in a  
9       drug treatment program approved by the Bureau of  
10      Prisons.

11              Is there a request for a recommendation,  
12      Mr. Civille?

13              MR. CIVILLE: In Northern California,  
14       preferably in the bay area, Your Honor.

15              THE COURT: I'll make a recommendation of an  
16       institution in Northern California, subject to this  
17       defendant's security classification and space  
18       availability as determined by the Bureau of Prisons.

19              Upon release, Mr. Su will be placed on 66  
20       months of supervised release, during which he shall  
21       obey all federal, state, and local laws; comply with  
22       all conditions of release set forth by the sentencing  
23       commission and adopted by this court; refrain from  
24       unlawful use of any controlled substance; and will  
25       submit to one drug test 15 days after release, at least

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1       two thereafter, not to exceed eight per month.

2               To participate in a substance abuse treatment  
3       program approved by the probation office for narcotic  
4       and alcohol dependency. You will also participate in  
5       testing for detection of substance abuse, and will make  
6       co-payment in the amount not to exceed \$25 per month  
7       payable to the U. S. Probation office. Will refrain  
8       from the use of alcohol, and submit to testing for use  
9       of alcohol.

10              Will obtain and maintain gainful employment.  
11       Will report to the U. S. Probation officer once a week  
12       during the time he is employed and there after provide  
13       proof that he is actively seeking employment.

14              Comply with all other previously imposed  
15       conditions of this court.

16              In imposing this sentence, the court finds  
17       that this is a fair, just, and reasonable sentence and  
18       a sentence that is sufficient but not greater than  
19       necessary to comply with the purposes set for  
20       sentencing.

21              Mr. Su, as I have indicated, from his actual  
22       characteristics, that this defendant is a very  
23       intelligent individual who for some reason falls off  
24       the wagon, if you will, from time to time and engages  
25       in conduct which is not only harmful to himself, but

1 also to his community, and more specifically to his own  
2 family. The court finds that the time that has been  
3 imposed is sufficient to punish Mr. Su, but at the same  
4 time also provide a deterrence to others from engaging  
5 in this type of conduct, and also providing Mr. Su with  
6 sufficient tail or period of supervised release after  
7 he is released from incarceration that will allow him  
8 to have supervision and care that he needs.

9 Counsel, is there anything else?

10 MR. CIVILLE: No, Your Honor.

11 MR. BLACK: No, Your Honor.

12 THE probation officer: Regarding the  
13 co-payment not to exceed \$25, you stated payable to the  
14 U. S. Probation office?

15 THE COURT: Payable as directed by the  
16 probation office. Excuse me.

17 If nothing else, then this defendant will  
18 remain in the custody of the United States marshal  
19 pending the return to the Bureau of Prisons forthwith.

20 MR. CIVILLE: Thank you, Your Honor.

21 MR. BLACK: Thank you, Your Honor.

22 THE COURT: We're in recess.

23 (Proceedings concluded at 12:20 p.m.)

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Wanda M. Miles  
Official Court Reporter  
District Court of Guam

1 CERTIFICATE OF REPORTER  
23 CITY OF AGANA )  
4 TERRITORY OF GUAM ) ss.  
56 I, Wanda M. Miles, Official Court Reporter  
7 of the District Court of Guam, do hereby certify the  
8 foregoing pages 1-20, inclusive, to be a true and  
9 correct transcript of the digital recording made and  
10 transcribed by me of the within-entitled proceedings  
11 at the date and time therein set forth.

12 Dated this 22nd day of November, 2006.

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Official Court Reporter  
District Court of Guam